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Via ECF

Hon. John G. Koeltl
United States Courthouse
500 Pearl Street, Room 14A
New York, NY 10007

Re: Rule II(B) Pre-Motion Conference Letter
Tapp Market Influencers LLC, *et al.* v. Espire Ads LLC, *et al.*
Civil Action No. 21-cv-11068 (JGK)

Your Honor:

We hope this finds you well. Please be advised that this firm represents all defendants in the above-captioned matter. We write pursuant to Rule II(B) seeking a pre-motion conference for leave to file a dismissal motion against plaintiffs under this Court's prevailing bright-line "first-filed" rule, insofar as defendants commenced an inextricably intertwined matter under Civil Action No. 21-cv-10623 (JGK) prior to plaintiffs' commencement of the instant matter. *See e.g. D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95 (2d Cir. 2006); *see e.g. Cong. Shearith Israel v. Cong. Jeshuat Israel*, 983 F.Supp.2d 420 (S.D.N.Y. 2014).

The "first-filed" rule is particularly applicable where, as here, the defendant in the first-filed action is aware of that action before it is served and nevertheless, commenced a second action. *Compare Amperion, Inc. v. Current Grp., LLC*, 2010 WL 3469307 (S.D.N.Y. 2010), *with* ECF Dkt. 1, at ¶ 92, *and* ECF Dkt. 16 (Statement of Relatedness) ("there is an identity of underlying facts, most parties and issues").

Moreover, the "first-filed" rule is typically invoked where, as here, the second action should have been interposed as compulsory counterclaims in the first action, as this matter is inextricably intertwined with the first matter, as it arises out of the same transactions, occurrences, and subject-matter of the first action. *Compare* ECF Dkt. 1, *with* Espire Ads LLC, *et al.* v. Tapp Influencers Corp., *et al.*, Civil Action No. 21-cv-10623 (JGK), at ECF Dkt. 1; *see e.g. Nat'l Equipment Rental Ltd. v. Fowler*, 287 F.2d 43 (2d Cir. 1961).

Nevertheless, in furtherance of administrative convenience and judicial economy, during a telephone conference with plaintiffs' counsel, plaintiffs were offered defendants' consent to a stipulation discontinuing the instant action and granting plaintiffs leave to fully interpose plaintiffs' instant claims as counterclaims in the first action, as well as join any and all co-defendants and/or third-party defendants as they wished, which plaintiffs refused, culminating in the stipulation by and amongst the parties hereto under ECF Dkt. 20-22.

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Accordingly, defendants respectfully request a Rule II(B) pre-motion conference for leave to file a dismissal motion of the instant matter pursuant to the “first-filed” rule, as the claims hereunder are inextricably intertwined with the claims in the other action, wherefore such claims should have been brought as compulsory counterclaims, undermining administrative convenience and judicial economy by maintaining an entirely duplicative litigation.

Dated: New York, New York
January 17th, 2022

Best regards,
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